

86-667

NO. A-74

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

Supreme Court, U.S.
FILED

OCT 3 1986

JOSEPH F. SPANIOLO, JR.
CLERK

EARLENE POLYAK

Petitioner

VS

BUFORD EVANS & SONS

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

APPENDIX

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

54/1986

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR
HARD COPY AT THE TIME OF FILMING.
IF AND WHEN A BETTER COPY CAN BE
OBTAINED, A NEW FICHE WILL BE
ISSUED.

APPENDIX A

In the Circuit Court of Lawrence County,
Tennessee.

Buford Evans & Sons , Plaintiff v Earlene
Polyak, Defendant, Case No. 10647.

Hearing in General Secessions Court on October 1,
1984, appealed to Circuit Court on October 10, 1984.
Circuit Court Clerk refused to allow appeal until
Defendant went to County Court Clerk and brought
back a copy of the deed to additional forty (40)
acres of land. Jury trial scheduled for April
session of Court in 1985.

Trial set for December 26, 1984, by the
Honorable Jim Hamilton.

Presiding: Jim Hamilton

Motion for forty-five (45) day continuance
denied on December 26, 1984.

Motion for Judge Hamilton to disqualify him-
self denied on December 26, 1984.

Judgment entered on August 7, 1985.

Amended Judgment signed by Judge Hamilton on
August 22, 1985.

Judgment and Amended Judgment appealed to the
Court of Appeals of Tennessee, on August 29, 1985.

Copy of notice of appeal returned with letter stating Rule 5(a) amended on August 15, 1984, and no longer to send copy of notice of appeal to the Court of Appeals, on September 9, 1984.

Motion to forward records to the Court of Appeals for appeal submitted to Circuit Court on November 1, 1984.

Received letter from Circuit Court Clerk, Gerald Wilson on November 2, 1984, case closed.

Motion to forward records to the Court of Appeals denied on November 7, 1984, signed by J. T. Hamilton Circuit Judge.

FACTUAL BACKGROUND

This case arises out of the plan to take property already settled by agreement in 1976, initiated by Frank Hulen and Wilma Lesnansky v Earlene Polyak, Chancery Court Case No. 1974, located in the 14th Civil District of Lawrence County, Tennessee. As a result of this settlement by agreement, Earlene Polyak and her husband, Alex Polyak has restored and maintained the house on the agreed partition at their own expense for a retirement home to this date.

In 1982, Frank Hulen stated that he wanted the property sold so his kids could buy it, and Wilma Lesnansky joined him. They did not offer any compensation for restoration and investment in retirement home before taking the property to be sold at Public Auction. They retained William Boston, Boston Bates & Holt, who divided his loyalties and filed a complaint to sell property.

Defendant was obligated to retain Thomas Stack, Henry Henry & Stack, who promised to defend her right to her retirement home, restoration, and investment in the property. Mr. Stack stated that he needed \$1500.00 for research and to go against his friends in Lawrenceburg. He was able to get the tentative hearing scheduled by William Boston for July 15, 1983, scheduled for July 29, 1983. Prior to retaining Mr. Stack, the Honorable Jim Hamilton disregarded Defendant's request for a thirty day extension to allow her to find an attorney. Judge Hamilton sent a stating that Defendant should "let him know who would represent her at this hearing.

Plaintiff, Mr. Buford Evans alleges that Mr. Stack retained him to survey Defendant's property.

did not give Mr. Evans permission to survey property, and her first knowledge of this was when Mr. Stack stated at the initial sitting with him in the Courthouse in Pulaski, Missouri, which lasted about twenty minutes, that Evans was out measuring the farm on July 28, 1983.

Defendant was very ill as a result of traveling in Michigan in heat wave of 102 degrees against a wide warning against heart patients being exposed, and had asked for hearing to be rescheduled. Called again on the morning of July 29, 1983, hearing to be rescheduled to allow her to testify but Mr. Stack stated that "Mr. Boston" refused to reschedule hearing."

The honorable Jim Hamilton ordered property within two hours, while jury out on another day. Hearing was conducted in Maury County, when plaintiff filed in Lawrence, across lines and against Missouri law. Complainant Wilma Lesnansky did not testify, or come to hearing, and information at settlement by agreement withheld from record. Plaintiff's had agreement with Mr. Boston about court costs not to exceed \$500. and deny encumbrance

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN and
WILMA LESNANSKY,
Citizens and
residents of Lawrence
County, Tennessee
PLAINTIFFS

VS

CIVIL ACTION NO. 1974

EARLINE POLYAK, a
non-resident presently
residing at 3179 Middlefield Drive
Trenton, Michigan 48163
DEFENDANT

C O M P L A I N T

Plaintiffs would respectfully state and
show this Honorable Court the following:

That Rena Ann Hulen died intestate on or
about the 9th day of January 1976: that at
the time of her death she was a some 84 years
of age and a permnate resident of Lawrence
County, Tennessee; and that she died seized
and possed of a tract of land situated, lying
and being in the 14th Civil District of
Lawrence County Tennessee... and there are
no known encumberancesos of the date of her
death on said tract known to plaintiffs, and
if there are nay encumberances upon said tract
since her death , such is unknown to the plain-
tiffs.

.....
THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY
PROCESS IN THIS CAUSE.

Signed Frank Hulen

Frank Hulen

Signed Wilma Lesnansky

Wilma Lesnansky

Sworn and suscribed before me
this 19 day of April 1983.

Signed Gail Hughes N.P.

My comission expires: 1-11-86

WILLIAM BOSTON
BOSTON BATES & HOLT

ATTORNEYS FOR PLAINTIFFS
235 Waterloo Street
P.O. Box 357
Lawrenceburg, Tennessee 38464

We absolutely _____ land for the Cst of
Imp not to Exceed 500/00

Signed Frank Hulen
Signed William Boston

It appears from the above agreement on the
bottom of the complaint page 3, that the improvements
on the property by Defendant would not exceed \$500
the Plaintiffs.

The order to sell the property was prepared
by William Boston, Boston, Bates & Holt, and signed
by William Boston, Thomas Stack and Judge Hamilton.
Defendant called Judge Hamilton at his office in
Mt. Pleasant, Tennessee on _____ 19, 1983, and
complained that she did not agree to Mr. Stack
signing this order, but Judge Hamilton disregarded
her objections and signed order on the same day.

The taxpayer's copy of 1983, Property Receipt
No. 500-83-07353, Mrs. Rena Ann Hulen, Summertown,
Tennessee, shows an improved value of \$8100.00.
Defendant is the only person who has invested any
improvements in this property. This hearing was
almost secret and it appears facts are covered.

as follows:

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CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL

Plaintiffs

VS

CIVIL ACTION NO. 1974

EARLENE POLYAK

Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Court in Lawrence County, Tennessee, while holding Chancery Court for Lawrence County, Tennessee, upon complaint hereto filed in this cause, the answer thereto, the testimony of witness in open Court, and the entire record in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the court found in memo dated August 11, 1983, the following findings:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is noway to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Evaln Hooper unless the parties agree on another real estate company.

All of which is therefore, ORDERED AND DECREED
by the Court.

This the 19th day of Oct. 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
JASON BATES & HOLT

Signed William Boston
ATTORNEYS FOR PLAINTIFFS
Signed Thomas Stack
ATTORNEY FOR DEFENDANT

On December 19, 1983, Defendant raised the constitutional question by stating that she had been subjected to an unjust and unfair hearing and demanded a New Trial and submitted motion for amendment or alteration of judgment to allow compensation for monies before the distribution of the proceeds for the restoration and maintenance of retirement home. Defendant has suspected for some time that Mr. Stack was not representing her best interest and relieved him of his services.

After Defendant relieved Mr. Stack of his services she found that her suspicions were well founded she learned that he did not enter the memorandum brief, evaluation of the property prepared by Mr. Evans, bills for the restoration and maintenance of the property since 1976, and secure transcript of the proceedings. She found the

evaluation prepared by Mr. Evans with three parts
of equal value:

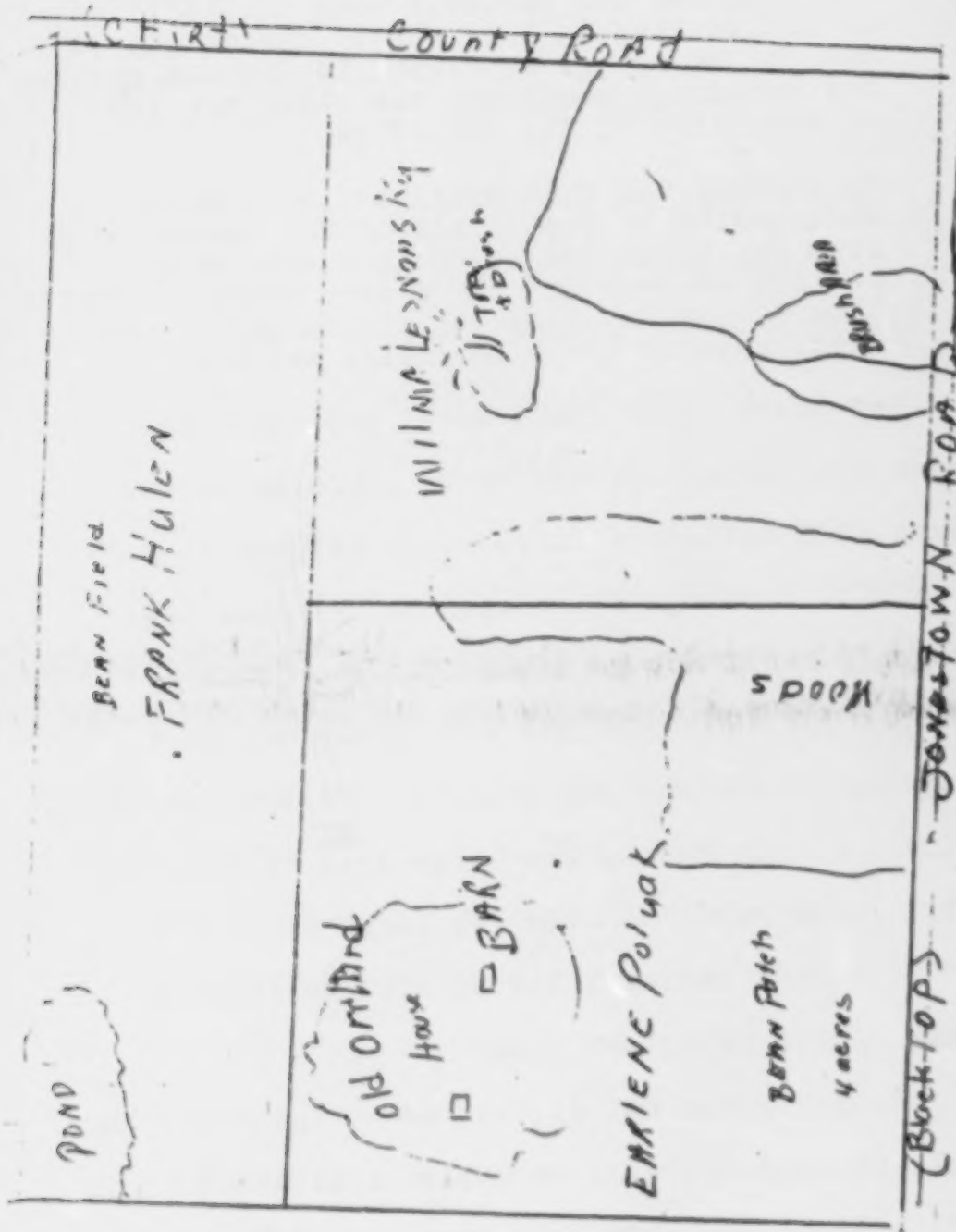
Total land value.....\$33,690.00
Total value of dwelling..... 6,330.00

The simplest and probably most equitable way
to divide land in kind was to divide the land
and the buildings separate. The person getting
the buildings would pay the other two $\frac{1}{3}$
of the value of the buildings.

TO RESTORE THE HOME would not be a major
undertaking to remove all of the inside paper
from the walls and sheet rock over wood
ceiling ir repaper. The floors would be sanded
into a beatiful floor or place carpet over
them. Repaint the wood inside and out.

Defendant also found ariel map and a hand
drawn map, which appears to be prepared by Mr.
Evans. She noticed a correlation between item No.
2, of the findings supporting the reasons the
property could not be divided in the Order of
October 19, 1983, and the hand drawn map of the
property. Defendant has observed property and finds
third portion (3) has one large area of tree and
large brush area, and another large brush area
around middle terrace. All of area is terraced to
rain and created wet area.

Property was not divided as to agreement and
could be used for sale at Public Auction as it is
aston to divide then sell as a whole. Maps follow:



Area of land in each tract is approximately 100 acres

over \$2.00

under \$2.00

under \$7.00

13.26 AC
\$11,249.00

Bean Field



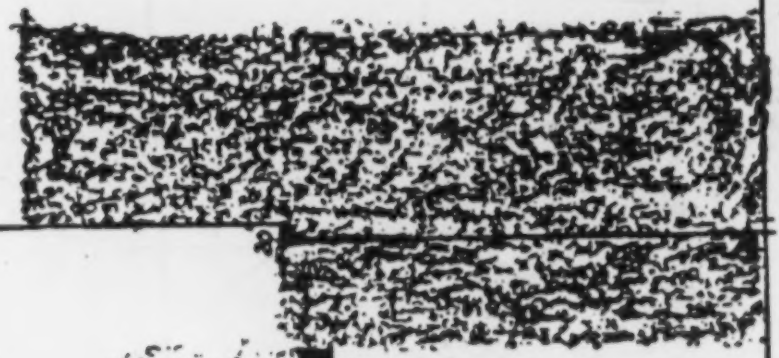
Bean Field

TRACT ①

495'

15.57 AC
\$11,223.00

Bean Field



TRACT ②

589'

12.47 AC
\$11,223.00

Bean Field

TRACT ③

464'

Judge Hamilton overruled Defand's motion for a new trial and Amendment or Alteration of judgment to award Defendant from the proceeds prior to distribution for the restoration and maintenance of retirement home on December 19, 1983. Judge Hamilron instructed Defendant to appeal his dicision within ninety(90) days, and instructed Mr. Boston to prepare the judgment. The judgment prepared by Boston Bates & Holt and signed by Charles Holt has been deemed unappealable by the Court of Appeals of Tennessee. It is as follows:

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon this day filed by the defendant, personally and in her own behalf, statement and argument by the defendant Earlene Polyak, in her own behalf, from all of which the Court finds no merit, and said Motion is here and now overruled in its entirety. Judgment is signed by Charles Holt, Boston Bates & Holt and Judge Hamilton and entered on December 20, 1983.

ORDER

This cause came to be heard on this the 19th day of December 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee on the motion for a new trial of amendment of of judgment of the order previously filed herin by the Defendant Earlene Polyak by and through her counsel of record, Henry Henry & Stack, and upon the oral motion of Earlene Polyak to be allowed to represent pro se, and that Henry Henry & Stack be relieved as counsel and further aforementioned motion not be

not be heard in this Court. IT IS THEREFORE ORDERED Henry Henry & Stack are relieved as counsel in this cause and that aforementioned Motion for a New Trial etc. be and here by dismissed. This order was signed by Thomas Stack William Boston and Judge Hamilton and entered on January 10, 1984.

Defendant found the above order in the materials Mr. Stack returned. She heard Judge Hamilton instruct Mr. Stack that the Court would prepare an order allowing him to withdraw from Defendant's case before she argued her own motions before Judge Hamilton on December 19, 1984. Mr. Stack prepared this order without Defendant's knowledge after his dismissal from her case. Defendant argued order invalid, but the Court of Appeals of Tennessee maintained that his order, instead of judgment should have been appealed.

On April 26, 1984, dismissing appeal and appeal has never been heard in this case. The pertinent part of order follows:

And it appearing from the record that appellant's motion to alter and amend was heard on December 19, 1983, that on January 3, 1984, appellant filed a notice of appeal from the final judgment entered on December 20, 1983, but the order overruling appellant's motion to alter or amend was not entered until January 10, 1984.

... and it appearing that the judgment from which appeal was sought is not a final judgment appealable as a right under TRAP Rule 3 in that said judgment orders sale of

property but does not confirm any sale or transfer title.

IT IS THEREFORE ORDERED that this appeal be and hereby dismissed at the cost to the appellant without prejudice to review of any and all actions of the Trial court by appeal prosecuted from final judgment.

Defendant believes that this order allowing the sale of her retirement home without any compensation for the restoration and maintenance unconstitutionally deprives her of her property interest without due process and just compensation. And that she suffered irreparable damage and the loss of a right to never be regained to her property.

On October 1, 1984, Defendant appeared in the Circuit Court of Lawrence County to defend her right to her property. Mr. Evans sued for the survey which was conducted without her knowledge or permission. The hand drawn map, which showed a correlation to the order to sell, appeared to be a map that could be used to sell the property at Public Auction, as it is the custom to sell in parts and then as a whole.

Defendant was not given any compensation for the restoration and maintenance of her retirement

home, the Trial Judge ordered her to pay cost of case for Plaintiffs without just compensation the Court of Appeals denied due process and just compensation, and Defendant assumed that she was further denied right to money form property by paying for the survey of this property for sale at Public Auction.

The Honorable B. E. Bryant was not in Court on October 1, 1984, but a young gentleman took his feet off of the back of a bench and conducted Court. He addressed Mr. Evans with deference and found in his favor. But stated that the order to pay cost of survey could be appealed within 10 days.

When Defendant tried to appeal with Notice of Appeal and check for \$600.00 Bond by mail, the Circuit Court Clerk, Gerald Wilson demanded that she appeal in person, and she rode a bus all night to meet the deadline, which caused pain and suffering with her health problems. Mr. Wilson refused to allow Defendant to appeal until she went to the County Court Clerk and brought back a copy of the deed to and additional forty (40) acres of property, after she admitted to

him that she did own more property in Lawrence County. Defendant scheduled jury trial, which was to be held in April session of Court in 1985.

On November 2, 1984, Defendant received a letter from the Circuit Court Clerk stating that Judge Hamilton scheduled trial for December 26, 1984, which was followed by a telephone call. Defendant stated that she was acutely ill with heart and bronchial condition and was preparing request for continuance as physician had already recommended that she go on to Florida in hopes health would improve in warm climate. She requested continuance on December 7, 1984, with affidavit and physician's statement. Request for continuance:

IN THE CIRCUIT COURT
FOR
LAWRENCE COUNTY, TENNESSEE

BUFORD EVANS
Plaintiff

VS

Appeal No. 10647
General Sessions No. 7196

EARLENE POLYAK
Defendant

REQUEST FOR CONTINUANCE

Defendant Earlene Polyak, requests a forty-five day continuance to the above styled case on the jury docket for December 26, 1984, at 9:00A.M. This request is necessary because of the extreme burden her appearance in Trial Court would place

on her health at this time. Defendant's physician is preparing a letter which will be enclosed with this request. She also encloses Affidavit as to the status of her health at this time.

Signed Earlene Polyak
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313)676-3364

Date: December 5, 1984

Defendant needed further medication upon arriving in Florida, and required treatment for bronchial condition and eyes. She kept calling the Court to find out if the Continuance had been granted, and finally was allowed to talk to Judge Hamilton. He ordered her to Court on December 26, 1984. Defendant submitted a Motion for Disqualification on December 20, 1984, with Affidavit. Motion follows:

IN THE CIRCUIT COURT
FOR
LAWRENCE COUNTY, TENNESSEE

BUFORD EVANS
Plaintiff

VS

Appeal No. 10647
General Sessions No. 7196

EARLENE POLYAK
Defendant

MOTION FOR DISQUALIFICATION

Defendant Earlene Polyak, move that the Honorable Jim Hamilton disqualify himself from the above styled case and all cases in the Chancery and Circuit Court of Lawrence County involving the defendant, due to the unfavorable opinions

formed without consideration of said defendant, and apparent dislike, which may result in injury to her health.

Defendant was informed by the Court Clerk that the Jury Trial which she requested to the above styled appeal would be held in April, 1985. She was informed that the Honorable Jim Hamilton scheduled this trial for December 26, 1984. Defendant requested continuance on December 7, 1984, submitted with a statement from her heart specialist, and an Affidavit as to the status of her health. On December 20, 1984, defendant contacted Judge Hamilton agains requesting Order for continuance due to further difficulties with her health, and he refused.

Judge Hamilton has never granted any orders, Motions, or petitions submitted to the Court by the defendant. He is awared of defendant's health and the fact that she will have to travel December 24 and 25, to appear in Court December 26, 1984, which will damage and injure her health and ability to defend her legal rights and claims.

By Signed Earlene Polyak
Earlene Polyak
4063 Hood Road
Lake Park, Florida 33410

Date: December 20, 1984
Notorized by Notary public

Defendant's husband obligated to come by airplane to Florida, and he and her son drove 900 miles with defendant on back seat of car on pillows to Lawrenceburg, Tennessee for trial. She had not expected to go to trial, she did not have time to look for lawyer, and obligated to try to defend by relying on oxygen and numerous medications. She was too ill to even review notes. Defendant did retain local Court Reporter for transcript of

proceedings:

— THE CIRCUIT COURT OF LAWRENCE COUNTY
LAWRENCEBURG, TENNESSEE
HON. JIM T. HAMILTON, PRESIDING

BUFORD EVANS
Plaintiff
VERSUS
EARTHENE POLYAK
Defendant

JURY TRIAL
Reporter's Partial Transcript
December 26, 1984

APPEARANCES FOR COUNSEL
For Plaintiff

Larry Douglas Brandon
320 East Main Street
Murfreesboro, Tennessee
615-890-8517 37130

For Defendant

In Propria Persona

JAMES LEONARD HOEBY
Court and Deposition Reporter
355 Holly Grove Road
Lewisburg, Tennessee 37091
(615)359-4455

Defendant ordered parts of the above transcript which describe the prejudice she believes Judge Hamilton displayed toward her to prejudice the decision maker. Judge Hamilton denied Motion to Disqualify himself over Defendant's objections and ordered her to trial for the third time without any preparation.

Evans v. Polyak pages 4 5 6

MRS. POLYAK: ... I have requested a continuance...
My doctor, Dr. Delfan Santos...

Her diagnosis is as follows: coronary artery disease

unstable angina, lung atelectasis, which affects her ability to perform even basic duties.

Patient is on several medications for her condition. Because of patient's multiple health problems and acute arthritis, we recommend the patient to seek a warmer climate.

.... When I was in Florida, Dr. Herman said, Mrs Polyak is in poor health with cardiac problems necessitating immediate medication.

I called several times to tell you that I have another doctor down there. I had another arthritic attack there. My eyes, I could not see.

I came here with --my son and my husband brought me in the back seat of a car on pillows and I have been in a motel all day, and I took oxygen, last night to be here.

And I think this is harassment to bring me here, today, in my state of health and against the Constitution, in which it says the right ... that we should not be inflicted with cruel and unusual punishment, and I think it is unusual punishment for my health to be here today.

THE COURT: All right, since we have the jury here...

MRS POLYAK: Your Honor, I have already listened to the jury in the hallway. I understand they are tired and they don't want to be here, because it's Christmas. I understand this jury has been coming in quite a while. I already feel their hostility toward being here.

THE COURT: Well,

MRS. POLYAK: and I want to put this on record.

THE COURT: Well, you've got it on record... I am going to overrule your motion asking me to disqualify myself. I'm going to overrule that motion.....

Evans v Polyak 35 36 37

Thomas Stack testifies against Defendant (former attorney. Plaintiff believes Judge prejudiced

Q. Didn't I put my own notice of appeal in on November 14, 1984? You had not appealed case

MR. STACK: Your, Honor--

THE COURT: Mrs. Polyak I am going to interrupt you, here, and I'm going to make a statement to this Jury concerning that aspect, although it is irrelevant to this case. I don't know the exact dates but I will tell this jury that M. Stack appeared in my Court. He had filed a motion for a new trial ... He appeared in a Court on the day that he was to appear to argue motion, before me, seeking for me to change my mind and grant new trial.

Prior to that argument, Mrs Polyak appeared there and asked me to allow her to relieve Mr. Stack from any further representation...

I then allowed Mrs. Polyak to file her own motion, which was done in her own handwriting on a yellow piece of legal paper. I did over strenuous objection of counsel on the other side, who was Mr. Boston. I overruled his objections and allowed her to present that as her motion for a new trial. I allowed her, that day, over strenuous objections from Mr. Boston to argue that case and argue that motion on her own behalf.

Mr. Stack, I assume, was back in Pulaski, peacefully practicing law and I want you to understand that that is what he did in this case and I am not going to entertain any further questions concerning that Mrs. Polyak...

MRS POLYAK: I have one question.

THE COURT: All right. Ask it.

Q.BY MRS POLYAK: Mr. Stack did you hear Mr.Boston Object---

THE COURT: I'm not going to allow that. I'll say this and I put it in the record, Mr. Boston objected strenuously, that day....

MR STACK: Your Honor, if I may... there was a long delay in the order actually being entered.

EVANS V POLYAK

ALEX POLYAK testifies. Defendant believes jury prejudiced again by Judge Hamilton when he yelled at her for about the fifth time. Page 39 40

THE COURT: Mrs. Polyak, I hate to interrupt you but I 'm interested in his testimony concerning any knowledge he has of what the issues of the

lawsuit we are here about today, is, and that is the contract with Mr. Evans (Defendant did not have a contract with Mr. Evans).... that's what you need to ask about.

MRS POLYAK: Your Honor, I would like to establish that this man is a well-respected man. He has come to Tennessee.

THE COURT: All right I'll take it--

MRS POLYAK: He has worked in the woods--

THE COURT: Mrs. Polyak, you wait just a minute when I say something.

MRS. POLYAK: Yes sir.

THE COURT: I'll take judicial notice and I am sure he is a well-respected man.... Now if he knows anything about that contract, that's what I want to hear.

Evans v Polyak pages 52 53

JUDGE HAMILTON: (part of jury instruction)

Ladies and gentleman, you have heard a lot in this case about a partition suit. Now, I'm going to very briefly define for you, basically, what a partition suit is.

A partition suit is a suit that is brought by one or more heirs to an estate. For instance if you have four children in an estate and there is left to them in equal shares, a tract of land. If they are unable to agree upon an equal division of that land then one or more of them may file in court what is called a partition suit and ask that the land be sold and the proceeds of the sale divided equally among the heirs, and that is what a partition suit means.

One side says, "we can't divide it, equally any way except to sell it and divide the money, equally. The other side says, "No that's not true. We think we can divide the land up and give an equal portion of the land, so that is basically what a partition suit means..... (The Judge reads from a red book defining the law on agency, which the Court reporter left out of the transcript).

.....

Although desperately ill with bronchial and heart problems, Defendant was obligated to appear at this trial on short notice, without knowledge of law or any preparation and try to defend her constitutional right to an additional forty(40) acres of property the Circuit Court Clerk was holding a copy of the deed. She and her husband were required to both sign a bond. Defendant believes Judge Hamilton influenced this jury, and there are many more examples in this transcript.

On December 26, 1984, Defendant checked Notice of Nonsuit in Circuit Court Case Nos. 10611, Earlene Polyak v William Boston, Boston Bates & Felt, and 10612, Earlene Polyak v Thomas Stack, Henry Henry & Stack, and found what appears to be objections to the sale of her property in Chancery Court on Circuit Court Cases with orders to pay costs case with execution.

Defendant submitted Notice of Nonsuit of Nonsuit on August 31, 1984, and she was finally able to contact Judge Hamilton on October 31, 1984. In this telephone conversation, Judge Hamilton stated that he had signed an order dismissing all of her cases in Lawrence County.

CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS

CIVIL ACTION NO. 10611

WILLIAM BOSTON
BOSTON BATES & HOLT

NOTICE OF NONSUIT

Plaintiff Earlene Polyak, pursuant to Rule 41.01, Tennessee Rules of Appellate Procedure, hereby give notice of nonsuit without prejudice in Civil Action No. 10611, filed against William Boston Boston Bates & Holt on July 27, 1984, to Plaintiff refiling cause of Action.

Date: August 31, 1984

Signed Earlene Polyak
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS

No. 10611

WILLIAM BOSTON
BOSTON BATES & HOLT

ORDER

This cause came on to be heard and was heard on the 9th day of October, 1984, before the Honorable Jim T. Hamilton, Circuit Judge on motion of the Plaintiff for this Court to enjoin the sale of certain real estate, which was recently ordered sold from a partition suit which was heard in Chancery court in Lawrence County, Tennessee. The chancery Court heard proof, ordered the real estate sold for partition. The plaintiff appealed this decision to the Court of Civil Appeals where the decision of Chancery was upheld. The plaintiff then petitioned the Supreme Court of Tennessee for Certiorari, and this was denied.

It is therefore Ordered, by this Court that the motion of the plaintiff for this Court to enjoin the sale of this real estate for partition be dismissed. It is further ordered that the cost of this case be adjudicated against the defendant for which execution may issue if necessary.

This the 9th day of October, 1984.

Signed Jim T. Hamilton
Circuit Judge

APPROVED FOR ENTRY:

EARLENE POLYAK PLAINTIFF

WILLIAM BOSTON DEFENDANT

II) CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS CIVIL ACTION NO. 10612

THOMAS STACK
HENRY HENRY & STACK
Defendant

NOTICE OF NONSUIT

Plaintiff Earlene Polyak, pursuant to Rule 41.01, Tennessee Rules of Civil Procedure, hereby gives notice of nonsuit without prejudice, in Civil Action No. 10612, filed against Thomas Stack Henry Henry & Stack on July 27, 1984, to Plaintiff refiling of cause of action.

Date: August 31, 1984.

Signed Earlene Polyak
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS No. 10612

THOMAS STACK
HENRY HENRY & STACK

O R D E R

This cause came on to be heard and was heard

on the 9th day of October 1984, before the Honorable Jim T. Hamilton, Circuit Judge on the Motion of the Plaintiff for this Court to enjoin the sale of certain real estate, which was recently ordered sold from a partition suit which was heard in the Chancery Court for Lawrence County, Tennessee.

The Chancery Court heard proof, and ordered the real estate sold for partition. The plaintiff appealed this decision to the Court of Civil Appeals, where the decision of the Chancery was upheld. The plaintiff then petitioned the Supreme Court of Tennessee for Certiorari, and this was denied.

It is therefore Ordered, by this Court that the Motion of the plaintiff for this Court to enjoin the sale of this real estate for partition be dismissed. It is further Ordered that the cost of this case be adjudicated against the defendant for execution may issue if necessary.

Signed Jim T. Hamilton
CIRCUIT JUDGE

APPROVED FOR ENTRY:

EARLENE POLYAK PLAINTIFF

THOMAS STACK
HENRY HENRY and STACK

Defendant was not in this Court on October 9, 1984. She did not arrive to appeal Case No. 10647, Buford Evans v Earlene Polyak until about 1:30 P.M. on October 10, 1984.

On February 4, 1985, Defendant received the transcript of the Proceedings in Case No. 10647 Buford Evans V. Earlene Polyak. Judge Hamilton did not enter the judgment in the Circuit Court to be appealed to the Court of Appeals of Tennessee.

On May 3, 1985, the Court of Appeals denied
Application for Permission to Appeal.

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

RUFORD EVANS
Plaintiff-Appellee

EARLENE POLYAK
Defendant-Appellant

O R D E R

The defendant, Earlene Polyak, has filed with this Court an application for extraordinary appeal. Said application complains of various actions of the Trial Judge during a trial, but does not designate, describe or exhibit a copy of any order or judgment of the Trial Judge.

There is no showing of why an appeal as of right or appeal by permission is not available to applicant.

It is therefore ordered that said application for extraordinary appeal be denied.

ENTER MAY 3, 1985

Signed by Judges

HENRY F TODD
PRESIDING JUDGE

SAMUEL L. LEWIS

BEN H. CANTRELL

WILLIAM C. KOCH JR.

Application for Rehear of Application for Permission to Appeal was denied on May 17, 1985 by the above named Judges of the Court of Appeals of Tennessee.

Application for Permission to Appeal to the Supreme Court of Tennessee was denied, ^{8/26/85} but Judge

Hamilton signed Judgment on August 7, and Amended Judgment on August 22, 1985.

STATE OF TENNESSEE
CIRCUIT COURT OF LAWRENCE COUNTY

In the Circuit Court for Lawrence County, Tennessee
Civil Action No. 10647

BUFORD EVANS & SONS
Plaintiffs

v

NOTICE OF APPEAL

EARLENE POLYAK
Plaintiff

Notice is hereby given that Earlene Polyak, defendant above named, hereby appeals to the COURT OF APPEALS OF TENNESSEE, from the final judgment entered in this action on the 7th day of August 1985, and the amended judgment signed on the 22nd day of August 1985, by the Honorable Jim Hamilton.

Signed Earlene Polyak
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Date: August 29, 1985

Defendant submitted parts of the Record to be included on Appeal and Issues to be presented with certificate of service. Issues :

1. Whether Judgment should be set aside as a result of Judge Hamilton's treatment of Appellant before the jury, prejudicing the decision maker and the judicial process.

2. Whether Judge Hamilton should have obligated Appellant to defend herself without counsel while acutely ill and against letters of physicians verifying illness, and Judgment should be set aside.

3. Whether Appellant obligated to pay Buford

Evans for measuring property that had already been appraised, when he did not have her permission and she did not have knowledge of his measuring her property, and no contract with him, and decision should be set aside.

4. Whether Buford Evans possessed valid Surveyor's License and measurement of property according to scale, accurate description of land, and decision should be set aside.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing description of papers, parts of transcript, and issues to be appealed has been mailed to all parties of interest in this pleading.

On September 9, 1985

Signed Earlene Polyak

COPY MAILED TO:

Mr. Larry Brandon

Attorney at law

Murfreesboro, Tennessee 37133

Mr. Ramsey Leathers Clerk

100 Supreme Court Building

Nashville, Tennessee 37219

COURT OF APPEALS
STATE OF TENNESSEE
NASHVILLE 37219

September 9, 1985

Dear Counsel:

RE: BUFORD EVANS

VS.

EARLENE POLYAK

We are returning herewith the copy of the notice of appeal forwarded to this office in the above case.

An amendment to Rule 5(a) of the Tennessee Rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the notice of appeal be filed with the clerk of the appellate court.

Signed Ramsey Leathers
Ramsey Leathers, Clerk

Letter closing case:

October 1, 1985

Mrs. Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

RE: Buford Evans vs
Earlene Polyak
Civil Action #10647

Dear Mrs. Polyak:

We received an Order which was entered on September 30, 1985, denying your Petition to Rehear the Denial of the application for permission to appeal.

We therefore consider this case closed until we hear differently from the Supreme Court.

Sincerely yours,
Signed Gerald Wilson
Circuit Court Clerk
cc. Judge Jim T. Hamilton
Judge James L. Weatherford
Buford Evans
Larry D. Brandon

Defendant tried to explain that application to appeal should not effect appeal as a right, and that notice of appeal was properly before the Court. Judge Hamilton denied request for restraining order against the sale of property.

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENN

BUFORD EVANS & SONS
Plaintiff

vs

CIVIL ACTION NO.10647

EARLENE POLYAK
Defendant

O R D E R

This case came on to be heard and was heard on the 17th day of October, 1985, before the

Honorable Jim T. Hamilton, Circuit Judge.

It appeared to the court that the Motion of the Defendant is not well taken and should not be granted.

It is therefore ORDERED that the Motion for a Restraining Order is hereby denied.

This 17th day of October, 1985.

Signed Jim T. Hamilton
Jim T. Hamilton
CIRCUIT JUDGE

Defendant submitted a motion to forward the records for appeal in Case No. 10647, to the Circuit Court of Lawrence County, Tennessee on November 1, 1985. Judge Hamilton denied this motion:

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENN
BUFORD EVANS & SONS
vs
EARLENE POLYAK
CIVIL ACTION NO: 10647

O R D E R

This case came on to be heard and was heard before the Honorable Jim T. Hamilton, on plaintiffs Motion to Forward records of this case from the Circuit Court of Lawrence County, Tennessee to the Court of Civil Appeals.

IT IS ORDERED by the Court that Plaintiff's Motion be denied.

This 7th day of November, 1985.

Signed Jim T. Hamilton
JIM T. HAMILTON
CIRCUIT JUDGE
PART 1

APPENDIX B

In the United States District Court, Middle District of Tennessee.

Buford Evans & Sons, Plaintiffs v. Earlene Polyak, Defendant. Case No. 1:85-0120

Petition for Removal filed on November 12, 1985, with copies of proceedings, issues, parts of the record, Request for restraining order against sale of property copy of partial transcript of proceedings, Notice of petition for removal to Mr. Gerald Wilson Circuit Court of Lawrence County, and to Mr. Larry Brandon, Attorney for Mr. Evans, and Removal Bond. Jury Trial Requested.

Bond: Earlene Polyak was not allowed to appeal to Circuit Court by Mr. Gerald Wilson, Circuit Court Clerk, until she went to County Court and brought copy of deed to additional forty(40) acres to him on October 10, 1984. Mr. Alex Polyak was also required to sign Bond on December 26, 1984, Case No. 10647.

Dismissed: November 27, 1985, within 20 days without oral argument or any kind of hearing.

Presiding: The Honorable Thomas A Wiseman Jr.

SUMMARY

The United States District Court was petitioned

for removal of the above styled civil action on the ground that Petitioner has been denied by state court proceedings her rights secured and guaranteed to her by laws providing for equal civil rights if citizens of the United States by the Fifth and Fourteenth Amendments. Such denial continues to occur in that Petitioner has been denied due process and equal treatment and the constitutional right to a fair trial and appeal as a right in the Circuit court of Lawrence County. The deprivation of her right to her property is irreparable damage and loss of a right to never be regained to her property.

After The Honorable Jim Hamilton denied Defendant's motion to forward the records in this case to the Court of Appeals of Tennessee, she filed a complaint against Jim Hamilton, Individually and in his judicial capacity, Jointly and Severally and the Circuit Court of Lawrence County, Tennessee, Case No. 1:85-0116, on November 8, 1985. She submitted the petition to remove Buford Evans & Sons Case No. 10647, from the Circuit Court of Lawrence County, Tennessee and to join to Case against Jim Hamilton and Circuit Court of Lawrence

County pursuant to 28 USC 1441(c). District Court
Case No. 1:85-0120, Buford Evans & Sons v Earlene
Polyak was filed on November 12, 1985.

CIVIL COVER SHEET

Plaintiffs
BUFORD EVANS & SONS
233 East Gaines St.
P.O. Box 190
Lawrenceburg, Tennessee
38464

Defendants
EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183

Attorney
Larry Brandon
P.O. Box 5065 Uptown Station
Murfreesboro, Tennessee 37133

CAUSE OF ACTION

Deprivation of Civil and Constitutional Rights
provided in the Fifth and Fourteenth Amendments

(Reverse Side)

Date 11/8/85

The above case is being petitioned for removal
from the Circuit Court in Lawrence County, Tennessee
in conjunction with Complaint against Jim T.
Hamilton, Individually and in his judicial capacity,
Jointly and severally, and the Circuit Court of
Lawrence County, which was submitted to this Court
on November 7, 1985.

Appellant alleges that her Civil and Constitu-
tional Rights as provided by the Fifth and Fourteenth
Amendments have been violated as the result of
denial of right to appeal as stated in Tennessee
State Laws, and the Federal Laws of the United States.

CAUSE OF ACTION

Appellant believes that the denial of right
to appeal is deprivation of Civil and Constitutional
Rights guaranteed by the Fifth and Fourteenth
Amendments.

Complaint No. 1:85-0116 was dismissed within
five days of filing on November 13, 1985, follows:

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

Received for Entry
November 13, 1985

EARLENE POLYAK

VS

JIM T. HAMILTON, Individually
and in his judicial capacity as
Circuit Judge, Jointly and severally
and the CIRCUIT COURT OF LAWRENCE
COUNTY

ORDER

For reasons stated in the Memorandum
contemporaneously filed herewith, the application
for extraordinary relief is denied and the case is
dismissed on the Court's own motion. No process
shall issue but a copy of this memorandum will be
mailed to defendants.

Plaintiff Polyak is expressly enjoined from
filing any further actions in this Court regarding
partition for sale of property in Lawrence County
without express permission of this Court.

Signed Thomas A Wiseman
THOMAS A. WISEMAN JR.
CHIEF JUDGE

The above styled case was dismissed within
five days including a week end after filing with
out oral argument or any kind of hearing. Judge
wiseman issued an injunction against Defendant
filing further cases in the United States District
Court.

Case No. 1:85-0120, Buford Evans v Earlene
was dismissed within 14 days after filing with
out oral argument or any kind of hearing. Defendant
was afraid to submit Petition to Rehear, wrote letters

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

BUFORD EVANS & SONS

ENTERED NOV 26, 1985

VS

Civil Actoin No.

EARLENE POLYAK

1:85-0120

ORDER

Before this Court is the pro se Petition for removal of suit for property survey, filed by Earlene Polyak. This is the fifth(fourth) under different headings but all delaing with Mrs Polyak dissatisfaction with a state court action in Lawrence County in a partition suit brought by a surveyor to collect his fees. The Court has dismissed prior actions, and has enjioned Mrs Polyak from attempting to oigitate this matter in this Court, and from filing any further suits arising out of the partition suit.

This case is another mistaken effort on Mrs. Polyak's part. Because it was lodged before the Court issued its injunction, it is not subject thereto.

This case is not removable for several reasons
1. 28 USC 1446(b) requires petition for removal to be filed within 30 days after receipt of the defendant of the initial pleading set forth the claim for relief upon which processing is based.

Suit was filed in Lawrence County General Sessions Court, and Mrs Polyak encloses a letter to her dated August 20, 1984, from the Secretary of the State notifying her of suit with an appearance of September 12, 1985, and is therefore untimely over a year.

2. The suit for a debt allegedly due Evans in the amount of \$475.00. Jurisdiction of this Court for removal is governed by 28 USC 1441(a) cases in which this court would have original jurisdiction.

Although Mr. Evans suit against Mrs Polyak is between citizen's of different states the amount in controversy is the amount Mr. Evans sued for \$475.00 not amount Mrs Polyak claims to have lost in adverse judgment of the court in the partition suit. A Counter-claim cannot supply the necessary prerequisite of \$1000.00 amount in controversy 28 USC 1332.

3. The petition must be verified. It is not.

4. The petition must contain a copy of the process and pleadings served upon her 28 USC 1446, It does not.

5. The petition must be accompanied by a bond with good surety . There is not surety on Mrs Polyak

bond.

This petition is dismissed and the case is remanded to the Circuit Court of Lawrence County. Mrs Polyak is cautioned to seek legal advice before filing further frivolous suits.

Signed Thomas A. Wiseman Jr
THOMAS A WISEMAN JR
CHIEF JUDGE

The above case is only the fourt one filed in the District Court in an attempt to seek divversity\ of citizenship and the protection from local political influence and prejudice. It appears the same the same prejudice found in the State Court. Defendant found that htis case could be appealed despite remand under 1443(1) and 1443(2). It is her opinion that the invalid map which she believes was composed at her expense for the sale of her property at Public Auction would allow waive of thime under 60.02(b) PRCivP. Case No. 10611, Earlene Polyak v William Boston, Boston Bates & Holt(D.C. 3-85X-105), which denied filing, No. 10612, Earlene Polyak v Thomas Stack Henry Henry & Stack(D. C. No. 1:85-0125, was filed by Judge Wiseman after finding allegations of negligence and malfeasance, and all were joined to

United States District No. 1:85 v. Jim Hamilton 28
USC 1441(c).

NOTICE OF APPEAL TO A COURT OF
APPEALS FROM AN ORDER
OF A DISTRICT COURT

United States District Court for the Middle District
of Tennessee File No.
1:85-0120

EDFORD EVANS & SONS
Plaintiff

FILED DEC 9, 1985

v. NOTICE OF APPEAL

EARLENE POLYAK
Defendant

Notice is hereby given that Defendant above
named appeals to the the United States Court of
appeals for the Sixth circuit from the final
order denying removal of the above-entitled civil
action from the Circuit Court of Lawrence County
on the ground that she has been denied by such
State Court proceedings her rights guaranteed to
her by the law providing for equal civil rights of
citizens of the united States, and such denial
continues to occur in that she has been denied
appeal in the Circuit Court and the District
Court has denied right to be heard on November 26,
and entered into the record on November 27, 1985.

Date: 12/6/85

Signed Earlene Polyak
(Add 1 Photo. NY)

APPENDIX C

In the United States Court of Appeals for the Sixth Circuit.

Buford Evans & Sons, Plaintiff-Appellee v. Earlene Folyak, Defendant- Appellant Case No.85-6315. District Court No. 1:85-0120.

Notice of Appeal filed December 9, 1985.

Appeal dismissed after extension of time to prepare appeal granted due to Appellant's health problems, and after conversation between Case Supervisor and Appellee's lawyer.

Letter from Mr. Larry Brandon dated February 21, 1986, to Mrs. Yvonne Henderson.

Appeal dismissed before allowing brief and Appendix on March 7, 1986.

Rehear denied on May 12, 1986.

Motion to stay mandate denied on June 13, 1986.

Before: KENNEDY, CONTIE and RYAN, Circuit Judges.

Notice of Appeal to the Supreme Court of the United States received by the United States Court of Appeals on June 6, 1986.

Appellant appealed the final order dismissing the petition to remove the above case from the Circuit Court of Lawrence County on the ground that she had been denied by State Court proceedings her rights guaranteed to her by the laws providing for equal civil rights of citizens of the United States, and such denial continues to occur in that she had been denied appeal as a right to this case, which was properly before the Court, by Judge Hamilton denying the order to forward the record to the Court of Appeals of Tennessee, on November 7, 1985.

Appellant placed Complaint No. 1:85-0116, against Judge Hamilton and joined this case No. 1:85-0120 by 28 USC 1441(c) ... is joined with one or more claims or causes of action, the entire case may be removed to District Court. She had already been granted a thirty day extension of time due to illness, had just mailed briefs on case No. 1:85-0116, and was starting the brief in this case when she received a copy of a letter confirming a conversation between Mrs Yvonne Henderson Case Supervisor, and Mr. Evans lawyer, Mr. Larry Brandon, and dismissal of the case

- 43 -

Law Office of

LARRY DOUGLAS BRANDON
528 North Walnut Street
Murfreesboro, Tennessee 37133-5065
(615) 890-8517

February 21, 1986

Mrs Yvonne Henderson
United States Court of Appeals
Sixth Circuit
U.S. Post Office & Courthouse Building
Cincinnati, Ohio 45202

Re: Case No 85-6135
Buford Evans et al
vs Earlene Polyak
District Court No.
85-0120

Dear Mrs Henderson:

This letter will confirm our conversation of Friday February 21, 1986 whereby I indicated that I have no intention in participating in the appeal of Mrs. Polyak to the United States Court of Appeals. Please enter this letter for the record. Thanks for your cooperation. I am,

Sincerely,
Larry D. Brandon

cc: Earlene Polyak
4063 Hood Road
Lake Park, Florida 33418

Mr. Buford Evans
P.O. Box 190
Lawrenceburg, Tennessee 38464

When Appellant stated that Mr. Brandon had not been relieved as according to Court rules, she stated that they were not going to force any attorney to appeal case. Prior to this, Mrs. Henderson had stated that appeal could not be consolidated with No. 1:85-0116, and dismissal of this case followed

in disregard of Local Rule (8) case dismissed
after 10 days of filing without motion being
served on Appellant as follows:

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDFORS EVANS & SONS MAR 7 1986
Plaintiff- Appellees

VS

O R D E R

EARLENE POLYAK

Defendant-Appellant

BEFORE: KENNEDY, CONTIE and RYAN, Circuit Judges

This appeal has been referred to this panel
pursuant to Rule 9(a) Sixth Circuit(docket control)

Appellant has appealed from the November 26,
1985 order remanding the removed action to state
court. The action was remanded because removal
petition did not comply with 28 USC 1446 because
it was not filed within 30 days, the amount in
controversy was less than \$10000.00 the petition
was not verified, the required state court pleading
were not filed and no bond with surety was filed.
This was a remand pursuant to 1447(c) which is not
reviewable or otherwise. In *Re Romulus Community
Schools* 729 F 2d 431(6th Cir. 1984). The Court
is without jurisdiction to entertain appeal.

It is ordered that the appeal be and hereby



by the Court. Mandate was issued on first order of dismissal. She learned that District Court did not forward record containing materials submitted as evidence with petition. It si stated on the form returned from the Court of Appeals to the District Court Clerk that the record was never forwarded in this case.

No. 85-6135

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED MAY 12, 1986

FORD EVANS & SONS
Plaintiff- Appellees

O R D E R

MARLENE POLYAK
Defendants- Appellants

BEFORE: KENNEDY CONTIE and RYAN, Circuit Judges.

The within matter came on to for hearing on the petition for rehearing submitted by appellant. The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition for rehearing and concludes that the issues raised for the petition fot rehearing were fully considered upon original submission and session of the case. Accordingly, the petition for rehearing is denied. Signed John P. Hehman

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Civil Appeal Pre-Argument Statement

BUFORD EVANS & SONS	District	Judge
Plaintiff/Appellee	Middle	Wiseman
vs	Date	
	Appeal filed	cross
EARLENE POLYAK	12/10/85	Appeal
Defendant/Appellant		X yes

Appellant Earlene Polyak (313) 676-3364
3179 Middlefield Dr.
Trenton, Mi. 48183

Appellee Larry Brandon
P.O. Box 5065
Murfreesboro, Tennessee (305) 672-3564
57333

X	Damages
Denial of right	
to appeal	\$ 10475.00
	and costs

Nature of Suit

X Diversity

X Real Property

Note:

This petition was submitted as a cross-appeal. Mr Evans surveyed Appellant's property without her knowledge or permission, and she is asking damages for costs and inconveniences, and pain and suffering, caused by his unjustly filing complaint against the wrong person.

UNITED STATES DISTRICT COURT
-MIDDLE DISTRICT OF TENNESSEE
NASHVILLE 37203

April 30, 1986

Mr. John F. Hehman, Clerk
United States Court of Appeals
for the Sixth Circuit
U.S.P.O. & Courthouse Building
Cincinnati, Ohio 45202

Re: Case No. 86-5462, Mrs. Earlene Polyak
Petition for Writ of Mandamus

Dear Mr. Hehman,

This petition complains of the action of the undersigned in failing to file and issue process on a complaint of Mrs Polyak against William E. Boston. I have not previously acted upon this complaint because I was considering the issuance of a show cause order upon Mrs. Polyak to show cause why she should not be held in contempt of the previous order of November 13, 1985, whereby Mrs Polyak was enjoined from further filing any further suits in this court arising out of the partition sale of her property in Lawrence County. That order was entered because of the previous filings of Mrs Polyak against various members in this Court, all stating essentially the same facts, and all arising out of state court proceedings which had been fully litigated and adjudicated. I felt that Mrs Polyak was abusing the process of the courts. My decision in that regard is reinforced by the petitions for writ of mandamus received today. She has taken an inordinate amount of this court's time to the detriment of other litigants and should be severely sanctioned therefor.

I have rescued myself from further consideration of this or any matters concerning Mrs. Polyak. A copy of that order is enclosed. Please consider this my response to the petition filed herein.

Yours very truly,

Thomas A. Wiseman Jr.

cc: Mrs Earlene Polyak

No. 85-6134

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED AUG 15, 1986

EARLENE POLYAK

Plaintiff-Appellant

V

O R D E R

JIM T. HAMILTON INDIVIDUALLY AND
IN HIS JUDICIAL CAPACITY AS
CIRCUIT JUDGE, AND CIRCUIT COURT
OF LAWRENCE COUNTY

Defendants- appellees

BEFORE: ENGEL And GUY, Circuit Judges and
SUHRHEINCH, District Judge,

The plaintiff appeals the order sua sponte dismissing her pro se civil rights action against a state judge. This appeal was referred to this panel pursuant to Rule 9(a), Rules of the Sixth Circuit(docket control). Upon examination of the record and briefs, this panel unanimously agree that oral argument is not needed Rule 34(a), Federal Rules of Appellate Procedure.

The plaintiff filed third action under 42 USC 1983,(plaintiff did not give number as she is not a lawyer, and number given by panel in docket control) asserting that defendant Judge violated her civil rights by his handling of litigation to which plaintiff was a party. For relief, she sought damages and an injunction prohibiting the enforcement of an

for a partition sale entered by the defendant as a result of state litigation(pending appeal). In dismissing the action sua sponte, the district Court held the defendant immune from damages under 1983 because of absolute judicial immunity. Stumpt v Sparkman, 435 US 349(1987). It is also found the request for injunctive relief varred by the doctrine of res judicata because of prior litigation in both the state court and district court. The Court concludes the case was frivolous malicious and harassing(sic) and that it had the inherent power to prevent abuse of its process and prevent injustice. In light of prior actions filed by plaintiff, the court enjoined the plaintiff from filing without permission any future without court actions arising from state litigation. The plaintiff filed this appeal from that portion of the order dismissing the underlying action.

For the reasons stated by the district court, we find no error in the dismissal of the plaintiff's action. We observe that 1983 cannot be used to gain a review of an unfavorable state court decision properly rendered within the state court's jurisdiction and expertise. See Johns v Supreme

Court of Ohio, 753 F 2d 524 527 (6th Cir) cert denied.

US 106 S Ct 79 88 1 Ed 2d 65 (1985) Tonti v

Metropolis 656 F 2d 212 21 (6th Cir. 1981) We also

note that state courts per se are not persons

susceptible to suit under 1983. Coper Smith v

Supreme Court of Colorado, 465 F 2d 993, 10th Cir

1972. (No jury trial to determine liability)

It is therefore ordered that the district
court's order of November 13, 1985, dismissing the
plaintiff's action be nad hereby affirmed Rule 9(a)
(2) Rules of the Sixth Circuit. (docket control)

ENTERED BY ORDER OF THE COURT

Signed John P. Hehman
Clerk

On the 9 day of September, 1986.

Certificate of Service

I certify that a true and exact copy of this
appendix has been ailed fy First Class Mail to
Mr. Larry Brandon, Mufreesboro, Tennessee 37133.

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364